

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

CAPITOL RECORDS, INC., a Delaware Corporation; WARNER BROS. RECORDS, INC., a Delaware Corporation; ARISTA RECORDS, INC., a Delaware Corporation; BMG MUSIC, a New York general partnership; SONY MUSIC ENTERTAINMENT, INC., a Delaware Corporation; and UMG RECORDINGS, INC., a Delaware corporation,

Plaintiffs,

CIVIL ACTION No. 04-CV-40168 FDS

v.

JIM FITZPATRICK,

Defendant.

**NOTICE OF DEPOSITION OF  
JIM FITZPATRICK**

TO: Michael T. Gaffney, Esquire  
390 Main St., Suite 543  
P. O. Box 2896  
Worcester, Massachusetts 01613-2896

PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, Plaintiffs Capitol Records, Inc., Warner Bros. Records, Inc., Arista Records, Inc., BMG Music, Sony Music Entertainment, Inc., and UMG Recordings, Inc., by their attorneys, will take the deposition upon oral examination of Jim Fitzpatrick on May 31, 2005, at 9:30 a.m. at the offices of Foley Hoag LLP, 155 Seaport Blvd., Boston, MA 02210, before a person qualified to administer oaths.

The deposition testimony may be recorded by stenographic means and by instant visual display of the testimony. The deposition shall continue as necessary from day to day thereafter,

or at such other place and time as may be agreed upon by counsel, until completed, with such adjournments as to time and place as may be reasonably necessary.

You are invited to attend and cross-examine.

Respectfully submitted,



Colin V. Zick (BBO No. 556538)

Gabriel M. Helmer (BBO No. 652640)

Jocelyn L. Heyman (BBO No. 660240)

FOLEY HOAG LLP

155 Seaport Blvd.

Boston, Massachusetts 02210-2600

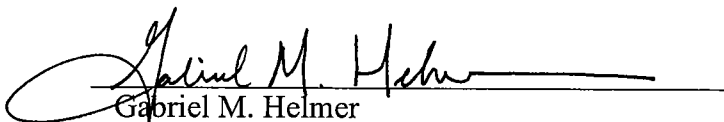
Telephone: (617) 832-1000

Dated: May 23, 2005

ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23th day of May, 2005, I caused a true copy of the above document to be served upon Michael T. Gaffney, Esquire, counsel for Jim Fitzpatrick, by Federal Express.



Gabriel M. Helmer

## **EXHIBIT B**



Colin J. Zick  
Boston Office  
(617) 832-1275  
czick@foleyhoag.com

May 27, 2005

**BY FACSIMILE**

Michael T. Gaffney, Esq.  
390 Main Street, Suite 543  
P.O. Box 2896  
Worcester, MA 01613

Re: *Capitol Records, Inc., et al. v. Fitzpatrick,*  
United States District Court for the District of Massachusetts,  
Western Division, Civil Action No. 04-CV-40168 FDS

Dear Mr. Gaffney:

I am writing to confirm your position that your client will not be attending the deposition noticed for him on May 31, 2005, at the offices of Foley Hoag LLP in Boston. I understand you believe this date falls outside the discovery period in this matter. It is my understanding that the close of discovery was Sunday, May 29, 2005 which, by operation of Rule 6, includes Tuesday, May 31.

I find your current position surprising, since you made no mention of it in your conversations earlier this month with Mr. Helmer about deposition dates for your client. In those conversations, you represented that your client was traveling outside the country and you would have to confer with him about deposition dates upon his return.

Very truly yours,

Colin J. Zick

cc: Gabriel M. Helmer, Esq.

*Signature(s) on Facsimile Copy are Computer Generated*

## **EXHIBIT C**



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

Gabriel M. Helmer  
Boston Office  
617.832.3010  
ghelmer@foleyhoag.com

June 2, 2005

**VIA FACSIMILE AND  
BY U.S. MAIL**

Michael T. Gaffney, Esq.  
390 Main St., Suite 543  
P. O. Box 2896  
Worcester, MA 01613-2896

Re: *Capitol Records, Inc., et al. v. Fitzpatrick*,  
United States District Court for the District of Massachusetts,  
Western Division, Civil Action No. 04-CV-40168 FDS

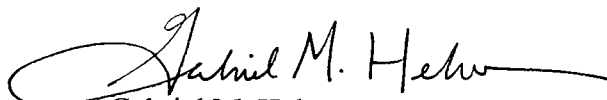
Dear Mr. Gaffney:

Pursuant to the Court's May 31, 2005 order, I write to request that you provide dates upon which an inspection of Mr. Fitzpatrick's computer may be conveniently accomplished. We have an expert who will be available Friday, June 3, 2005 and Saturday, June 4, 2005. Please let me know when Mr. Fitzpatrick will make his computer available at those times.

I also write to schedule a date for Mr. Fitzpatrick's deposition. In view of the fact that the Plaintiff's expert may require two weeks to perform an adequate forensic inspection of Mr. Fitzpatrick's computer, we propose to schedule the deposition for June 29, 2005. It would also be possible to schedule the deposition for June 28, 2005 or June 30, 2005, if Mr. Fitzpatrick is unavailable on June 29. At the court's direction, the deposition will be in Worcester; can we conduct it at your office? Please let me know as soon as possible what date Mr. Fitzpatrick will be available so that we can make all of the arrangements.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Gabriel M. Helmer

## **EXHIBIT D**



**Helmer, Gabriel M.**

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**From:** michaelgaffney@juno.com  
**Sent:** Thursday, June 02, 2005 2:01 PM  
**To:** Helmer, Gabriel M.  
**Subject:** RE: RIAA: Fitzpatrick



Letter to PC for  
recording ind...

June 2, 2005

Foley Hoag LLP  
155 Seaport Blvd  
Boston, MA 02210-2600

RE: Matter of: Capital Records, et al v. Jim Fitzpatrick  
Civil Action #: 04-40168 FDS

Dear Attorney Zick:

Be advised that my client's laptop is with my forensic expert and will not be available until mid next week. It should be available for your expert for next Saturday. Further, it is my understanding that a forensic examination may cause loss to the hard drive. I expect that you would agree to be held liable for any damages resulting from the review.

As to a deposition, June 29, 2005 should be fine. My office is available or several local court reporters do have office space in the area if you would prefer a more "neutral" ground.

Please forward a copy of any documents received via your subpoenas.

Finally, I have reviewed my notes from the interview of March 2, 2005 by your national counsel and I find that my client clearly advised them of the crashing and repair of his laptop. I note that your affidavit and representations to the court were that this information was first discovered on May 17, 2005. Based on the same, you were allowed a more liberal deposition. I suggest you resolve this matter and contact me.

Thank you.

Sincerely,

Michael T. Gaffney, Esq.

CC. James Fitzpatrick

## **EXHIBIT E**



**FOLEY  
HOAG** LLP  
ATTORNEYS AT LAW

Gabriel M. Helmer  
Boston Office  
617.832.3010  
ghelmer@foleyhoag.com

June 8, 2005

**VIA FACSIMILE AND  
BY U.S. MAIL**

Michael T. Gaffney, Esq.  
390 Main St., Suite 543  
P. O. Box 2896  
Worcester, MA 01613-2896

Re: *Capitol Records, Inc., et al. v. Fitzpatrick,*  
United States District Court for the District of Massachusetts,  
Western Division, Civil Action No. 04-CV-40168 FDS

Dear Mr. Gaffney:

I write with reference to our telephone conversation on Wednesday, June 8, 2005.

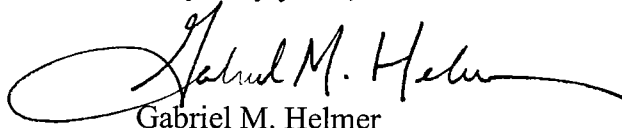
As we discussed during our conversation, the inspection of Mr. Fitzpatrick's laptop computer will occur on Saturday, June 11, 2005 at 9 o'clock a.m. in your offices in Worcester. The inspection will proceed for the duration of the time required to make a mirror image of the computer hard drive, a process which could take several hours depending on the size of Mr. Fitzpatrick's hard drive.

With respect to the matter of the subpoena directed to Charter Communications, Charter has informed us that they will only comply with the Plaintiffs' subpoena if Mr. Fitzpatrick consents or upon the issuance of a Court order. Please let me know as soon as possible whether Mr. Fitzpatrick will consent to the production of the requested materials.

We also discussed the matter of the Plaintiffs' motion to admit Timothy Congrove of Shook Hardy & Bacon LLP *pro hac vice*. Please let me know by Friday, June 10, 2005 whether you will assent to this motion or we will file it without your assent on Friday afternoon.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

  
Gabriel M. Helmer

## **EXHIBIT F**

**Helmer, Gabriel M.**

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**From:** michaelgaffney@juno.com  
**Sent:** Tuesday, May 17, 2005 1:16 PM  
**To:** Helmer, Gabriel M.  
**Subject:** Re: RIAA: Fitzpatrick



RIAA: Fitzpatrick

Attorney Helmer,

I note that this matter is on for conference for the 19th. Any chances of resolution or your affidavit being ready?

Should we consider advising the court we are near to settlement and to put of the conference?

My client will be available if needed.

Michael

Hi Mike,

Here are the responses you will need:

#1 Last two digits on MAC address on Webstar should be 'A8' not 'AB'.

# 2 Model # on LINKSYS Router- BEFSR41 ver.3

Model number on cable modem- DPX 2100 Series cable modem P/N 4001383

#3 In December, 2004 two events occurred:

- Beginning of Dec. 2004 computer hardware and components being 4+ years old began to malfunction. My computer support people asked that I

send in my computer shell w/o the hard drive for a refurbished computer shell. This did not correct the problem.

- One week later my computer support people told me to send in my computer shell and hard drive for reimaging. This did correct my problems. Several

other employees were having similiar problems " the computer freezing" at unexpected times and "unexpected loss of data".

My computer has not been out of my possession at any other time.

**Helmer, Gabriel M.**

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**From:** michaelgaffney@juno.com  
**Sent:** Saturday, April 30, 2005 11:22 AM  
**To:** Helmer, Gabriel M.  
**Subject:** Fw: RE: RE: RIAA: Fitzpatrick Case

Please advise receipt.

----- Forwarded Message -----

Hi Mike,

Additional info:

Webstar MAC address: 000A735F34AB

LINKSYS MAC address: 0012172DF6E2

Hope this helps.

Jim

James J. Fitzpatrick  
Senior Specialty Sales Associate (MBU)  
Sanofi Aventis Pharmaceuticals jim.ftzpatrick@sanofi-aventis.com 800-321-0855 x1903 Voice Mail 508-410-1413 Cell Phone

-----Original Message-----

From: michaelgaffney@juno.com [mailto:michaelgaffney@juno.com]  
Sent: Friday, April 29, 2005 1:58 PM  
To: Fitzpatrick, Jim PH/US  
Subject: Fw: RE: RIAA: Fitzpatrick Case

Please note: forwarded message attached

Attorney Gaffney,

I can appreciate the difficulty, especially considering the bewildering array of numbers and letters to be found on the back of most electronics these days. I understand that Webstar cable modems are all external boxes, so this should decrease some of the confusion. The MAC address should be on same label from which Mr. Fitzpatrick obtained the serial number. I am attaching to this email an Adobe Acrobat document (.pdf) that contains excerpts from Webstar user manuals that identifies the location of the MAC address on the Webstar cable modem. As you will see, the MAC address should be visible close to the serial number.

I could provide you with more specific instructions if you can tell me what model of cable modem and what model of network router Mr. Fitzpatrick has in his possession.

GABRIEL M. HELMER Foley Hoag LLP  
tel. (617)832.3010 fax. (617)832.7000 ghelmer@foleyhoag.com

-----Original Message-----

From: michaelgaffney@juno.com [mailto:michaelgaffney@juno.com]  
Sent: Wednesday, April 27, 2005 12:36 PM  
To: Helmer, Gabriel M.  
Cc: jim.ftzpatrick@sanofi-aventis.com  
Subject: RE: RE: RIAA: Fitzpatrick Case

Attorney Helmer,

I am forwarding a copy of your request to Mr. Fitzpatrick; however, I will be very surprised if he has any idea what you are requesting. As your former national counsel came to find out, Mr. Fitzpatrick is not very computer savvy.

Personally, I know where the router information would be; however, I am unaware of where any such information would be on cable modem if it was an internal device.

Could you be more specific?

Attorney Gaffney

-- "Helmer, Gabriel M." <GHelmer@foleyhoag.com> wrote:  
Attorney Gaffney,

Thank you for the enclosed information.

To round out the list of numbers, we also need the MAC addresses for both the Cable Modem and the Network Router. Typically, these numbers reside on a label on the bottom of those devices (sometimes the hyphens are removed, and sometimes the number is also identified as an "Ethernet address" or "Enet address). Once we have those numbers, I believe we will have everything we need to complete the proposed affidavit and protocol.

GABRIEL M. HELMER Foley Hoag LLP  
tel. (617)832.3010 fax. (617)832.7000 ghelmer@foleyhoag.com

-----Original Message-----

From: michaelgaffney@juno.com [mailto:michaelgaffney@juno.com]  
Sent: Wednesday, April 27, 2005 11:36 AM  
To: Helmer, Gabriel M.  
Subject: Fw: RE: RIAA: Fitzpatrick Case

Attorney Helmer,

Please review and advise.



Attorney Gaffney

----- Forwarded Message -----

Hi Mike,

Here is the info you are looking for:

Computer Brand Name: IBM Thinkpad T22

Model Number: 2648-5VU

Serial Number: 78-GZFC4 8/01

MAC Address: 00-03-47-90-B5-83

Network Cards: Not Sure

Cable Modem: Webstar Serial Number 101700982

Network Router: EtherFast Cable/DSL Router by LINKSYS Serial Number C2130D914282

If you need anything else let me know.

Hope all is well.

Jim

James J. Fitzpatrick

Senior Specialty Sales Associate (MBU)

Sanofi Aventis Pharmaceuticals jim.ftzpatrick@sanofi-aventis.com 800-321-0855 x1903 Voice Mail 508-410-1413 Cell Phone

-----Original Message-----

From: michaelgaffney@juno.com [mailto:michaelgaffney@juno.com]

Sent: Saturday, April 23, 2005 4:11 PM

To: Fitzpatrick, Jim PH/US

Subject: Fw: RIAA: Fitzpatrick Case

Please note: forwarded message attached

## **EXHIBIT G**

# THOMPSON COBURN

Thompson Coburn LLP  
Attorneys at Law

One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000  
www.thompsoncoburn.com

May 28, 2004

James W. Erwin  
314-552-6032  
FAX 314-552-7032  
EMAIL jerwin@  
thompsoncoburn.com

**HAND DELIVERED**

K. Lee Marshall  
Bryan Cave  
One Metropolitan Square  
211 N. Broadway, Suite 3600  
St. Louis, MO 63102

Re: *Sony Music Entertainment, et al. v. DOES 1-200*  
Case No. 4:04CV00339CEJ

Dear Lee:

Enclosed is the information responsive to the subpoena issued in the above referenced case. The list of 200 IP addresses listed in the subpoena have been numbered 1 – 200 for easier reference. A copy of the IP list is attached to this response. If you have any questions, please do not hesitate to contact me.

Sincerely yours,

THOMPSON COBURN LLP

By 

James W. Erwin

JWE/mhk

Enclosures

cc: Lawrence Christopher w/o encl.  
Stephen Higgins w/o encl.

Capitol Records v. Fitzpatrick  
Plaintiffs' 000074

**REDACTED**

86 66.189.39.77 2003-12-02 22:10.33 EST

Jim Fitzpatrick  
549 Grove St. Apt. 2  
Worcester, MA 01605  
(508) 410-1413  
jimfitzpatrick@chartercom.com

302 00 modem online 10.83.2.19 dhcp 000a.735f.34a8  
302 00 host unknown 66.189.39.77 dhcp 0003.4791.6cff

**REDACTED**

## **EXHIBIT H**

C:\WINNT\system32\cmd.exe

ft's Packet Scheduler>

Physical Address. : 44-45-53-54-42-00

DHCP Enabled. : No

IP Address. : 0.0.0.0

Subnet Mask. : 0.0.0.0

Default Gateway : 0.0.0.0

DNS Servers :

Ethernet adapter Local Area Connection:

Media State : Cable Disconnected

Description : Intel(R) PRO/100 SP Mobile Combo Ada

pter : 00-03-47-91-6C-FF

C:\Documents and Settings\Administrator>ipconfig/all

Windows 2000 IP Configuration

Host Name : SCCSP08204

Primary DNS Suffix : bvt.pharma-aventis.com

Node Type : Hybrid

IP Routing Enabled : No

WINS Proxy Enabled : No

DNS Suffix Search List : bvt.pharma-aventis.com  
pharma-aventis.com  
aventis.com

Ethernet adapter (B5C83177-3594-4B00-8F24-7F746307811B):

Connection-specific DNS Suffix : NOC Extranet Access Adapter (Microso

ft's Packet Scheduler>

Description : 44-45-53-54-42-00

Physical Address. : No

DHCP Enabled. : 0.0.0.0

IP Address. : 0.0.0.0

Subnet Mask. : 0.0.0.0

Default Gateway : 0.0.0.0

DNS Servers :

Ethernet adapter Local Area Connection:

Connection-specific DNS Suffix : bvt.pharma-aventis.com

Description : Intel(R) PRO/100 SP Mobile Combo Ada

pter : 00-03-47-91-6C-FF

Physical Address. : 152 65 96 240

DHCP Enabled. : Yes

Autconfiguration Enabled : 152 255 254 0

IP Address. : 152 68 95 1

Subnet Mask. : 152 68 224 17

Default Gateway : 152 68 173 17

DHCP Servers : 152 68 240 50

DNS Servers : 152 68 113 17

Primary WINS Server : 152 68 113 17

Secondary WINS Server : 152 68 113 17

Lease Obtained : Tuesday, June 08, 2005 9:45:56 AM

Lease Expires : Thursday, June 09, 2005 9:45:56 AM

C:\Documents and Settings\Administrator>

Start | C:\WINNT\system32\cmd.exe

Aventis

Aventis Field Configuration  
Windows 2000

Aventis Professional Workstation 2001

